IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11540 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LAXMI ALIAS LACHCHHU D/O DAMA KACHARA KHARVA

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 11540 of 2001

MR PRAVIN GONDALIYA for Petitioner No. 1

MR S.S. PATEL, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 05/02/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 17.10.2001 passed by the District Magistrate, Junagadh in exercise of power under Section 3

of the PASA Act. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The detaining authority has considered three registered offences against the detenu under the Bombay Prohibition Act. Statements of five anonymous witnesses were recorded by the sponsoring authority, out of which statements of only two anonymous witnesses were verified by the detaining authority. The other three witnesses were not even verified by the detaining authority. However, detaining authority have exercised powers under Section 9(2) in respect of all the five witnesses and have come to the conclusion that the activity of the detenu is anti-social and detrimental to public health and public order.

3. Learned Advocate Mr. Gondaliya challenges the order on the ground that the detaining authority has not verified three statements of anonymous witnesses and still powers under Section 9(2) of the Act are exercised, which has infringed the right of the detenu of making an effective representation and therefore, the detention of the detenu would be vitiated.

3.1 He further submitted that so far as statements are concerned, the authority has exercised powers under Sec. 9(2) of the PASA Act, in absence of any cogent material. No exercise is undertaken to verify whether the fear expressed by the witnesses is genuine or imaginery. This improper exercise of powers of claiming privilege under Sec. 9(2) of the PASA Act has also affected the right of the detenu of making an effective representation. He therefore urged that the petition may be allowed.

4. Learned Assistant Government Pleader Mr. S.S.Patel has opposed to this petition.

5. Having regard to the rival side contentions, it is amply clear that the statements of two anonymous witnesses out of five recorded by the sponsoring authority, were verified by the detaining authority and therefore this would vitiate the exercise of powers on account of infringement of right of the detenu of making an effective representation in respect of 3 witnesses whose statements have not been verified and whose identity has been with-held.

5.1 So far as the statements of witnesses are concerned, the satisfaction recorded by the detaining authority is not on basis of any cogent material. As observed by the apex Court in Bai Amina w/o Ibrahim Abdul Rahim Alla Vs. State of Gujarat, reported in 1981 GLR 1186, the authority is expected to consider the general background, character, antecedents, criminal tendency or propensity, etc. of the detenu and such of those matters as are relevant in the context of the informant must be enquired into and carefully examined by the detaining authority with a view to satisfying itself that the alleged apprehension is not imaginary or fanciful or that it is not merely an empty excuse invented by the informant, inter alie, to protect himself against the falsity of his version being exposed by an effective explanation of the detenu or to hide his own involvement or to conceal his enmity with the detenu.

5.2 In order to meet with this requirement, the detaining authority would be required to undertake a further exercise in addition to examining the anonymous witnesses. There is nothing to indicate that such an exercise is undertaken. A witness who has stated something before the functioning authority is bound to stick to his version before the detaining authority when he is summoned for verification, but what is stated by him is correct and genuine or not can be tested only after his version is cross-checked through other sources by undertaking further exercise. That having not been done, the subjective satisfaction cannot be said to have been recorded on the basis of any material and therefore, there is improper exercise of power under Section 9(2) of the PASA Act.

5.3 So far as the registered offences are concerned, the last offence relates to 22.6.2001, but order was passed on 17th October, 2001 and therefore, there was a gap of about 4 months. The subjective satisfaction recorded by the detaining authority is not genuine. The live-link between the activity of the petitioner and the order is snapped.

6. The petition is therefore, allowed. Order of detention dated 17.10.2001 passed by the District Magistrate, Junagadh is quashed and set aside. Detenu Laxmi @ Lachchhu D/o Dama Kaschara Kharva be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas